



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND SCHOOL EMPLOYEES ASSOCIATION,)	
)	Case No. SF-CE-400
Charging Party,)	
)	
v.)	Request for Reconsideration
)	PERB Decision No. 236
OAKLAND UNIFIED SCHOOL DISTRICT,)	
)	PERB Decision No. 236a
Respondent.)	December 31; 1982
)	

Appearances; Andrew Thomas Sinclair, Attorney for Oakland School Employees Association; Ember Lee Shinn, Attorney for Oakland Unified School District.

Before Gluck, Chairperson; Morgenstern and Jensen, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter Board or PERB) on a motion for reconsideration filed by the charging party, Oakland School Employees Association (hereafter OSEA). This Board, having duly considered the request for reconsideration filed by OSEA, hereby denies that request.

DISCUSSION

In Oakland Unified School District, (8/31/82) PERB Decision No. 236, the Board held, inter alia, that Oakland Unified School District (hereafter District) violated subsections

3543.5(a), (b) and (c) of the Educational Employment Relations Act¹ (hereafter EERA) by its unilateral deferral of 2 percent of an 8 percent employee tax sheltered annuity (hereafter TSA) plan with payment of the deferred amount to be made from anticipated reserves in the subsequent fiscal year. The hearing officer ordered the District to provide payment to the TSA fund of that amount withheld from the time of the deferral until present and ordered the District to make monthly payments at 8 percent until and unless a different timing schedule or amount is agreed upon between the parties.

In our decision, we ordered the District to provide payment to the tax shelter annuity fund (TSA) for members of the units represented by OSEA, of that amount withheld, if any, from September 1979 to present, with interest at the rate of

¹EERA is codified at Government Code section 3540 et seq.

Subsections 3543.5(a), (b), and (c) provide as follows:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

7 percent per annum, and henceforth make its TSA contributions at 8 percent in accordance with past practice, pursuant to its collective negotiating agreement with OSEA rather than on a monthly basis, as ordered by the hearing officer.

To demonstrate that reconsideration is warranted under PERB rule 32410,2 OSEA must show the existence of "extraordinary circumstances." Livermore Valley Joint Unified School District (10/21/81) PERB Order No. JR-9. OSEA contends that the Board's Order specifying that the District make payment of interest at the rate of 7 percent per annum of the amount withheld by the District actually benefits the District. OSEA argues that this

²PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et seq. Unless otherwise specified, all reference shall be to the Administrative Code.

Section 32410 provides, in pertinent part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Order allows the District to pay less interest than it would otherwise be required to³ and therefore the District is benefiting by its wrongdoing.

This argument does not claim errors of law or fact or newly discovered evidence which would bear on the Board's Order. OSEA simply disagrees with the remedy PERB provided. But, the hearing officer's proposed order included no interest payment whatsoever, yet OSEA did not raise that issue in its exceptions to his decision.⁴ Neither a party's disagreement with PERB's

³OSEA asserts that a rate of interest is paid which is set by the contract between the Board of Trustees and Union Mutual, and this rate is considerably higher than 7 percent.

⁴Section 32300 provides:

(a) A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to Section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in Section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to Section 32140 are required. The statement of exceptions shall:

- (1) State the specific issues of procedure, fact, law or rationale to which each exception is taken;
- (2) Identify the page or part of the decision to which each exception is taken;
- (3) Where possible, designate by page citation or exhibit number

discretionary judgment nor its effort to accomplish what it initially neglected to do constituted "extraordinary circumstances" which warrant reconsideration. OSEA's request is DENIED.

ORDER

The request by the Oakland School Employees Association that the Public Employment Relations Board grant reconsideration of Oakland Unified School District, (8/31/82) PERB Decision No. 236 is DENIED.

By the BOARD.

the portions of the record relied upon for each exception;

(4) State the grounds for each exception.

(b) No reference shall be made in the statement of exceptions to any matter not contained in the record of the case.

(c) An exception not specifically urged shall be waived.